

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MOUNTAIN OF FIRE AND
MIRACLES MINISTRIES, HAYWARD
BRANCH,

Plaintiff and Respondent,

v.

ADE OYEYEMI,

Defendant and Appellant.

B218591

(Los Angeles County
Super. Ct. No. BC 352398)

APPEAL from a judgment of the Superior Court of Los Angeles, Rex Heeseman, Judge. Reversed and remanded, with directions.

Law Office of Jeanne Collachia and Jeanne Collachia for Defendant and Appellant.

The Garcia Law Firm and Gilbert A. Garcia for Plaintiff and Respondent.

Appellant Ade Oyeyemi (Pastor Oyeyemi) challenges a judgment for conversion and negligent interference with prospective economic relations in favor of respondent Mountain of Fire and Miracles Ministries, Hayward Branch. He contends that respondent lacked standing to assert claims against him, and that it had no property interest in the assets underlying the claims; in addition, he maintains that respondent did not establish certain elements of the claims. We conclude that the interference claim fails as a matter of law on the evidence presented at trial, and that the conversion claim is similarly defective insofar as it targeted assets in which respondent had no property interests. We thus reverse the judgment, and remand for a new trial on the conversion claim.

FACTS

A. Background

Mountain of Fire and Miracles Ministries (MFMM) is an international ministry founded by Dr. Daniel K. Olukoya. Its headquarters is in Lagos, Nigeria, where Dr. Olukoya holds the position of General Overseer. Pastor Oyeyemi participated in MFMM and had a personal relationship with Dr. Olukoya.

In the early 2000's, using the business name, "Mountain of Fire and Miracles Ministries," Pastor Oyeyemi founded a church in Los Angeles and acted as its pastor. Following the creation of Pastor Oyeyemi's church in Los Angeles, respondent was established in Hayward. Respondent's pastor was Grace Ugeh.

On November 28, 2002, Pastor Oyeyemi executed a form agreement with MFMM that provided in part: "I hold this church in trust for and on behalf of Mountain of Fire and Miracles Ministries." On September 19, 2003, Pastor Oyeyemi filed articles of incorporation for a California nonprofit corporation named, "Mountain of Fire and Miracles Ministries, Inc." (Mountain). Pastor

Oyeyemi was initially identified as Mountain's agent for service of process; in addition, he served as its first chief executive officer.

In late 2004 and early 2005, MFMM began implementing an organizational plan that divided the United States into regions. Region 4, which contained both Mountain and respondent, was placed under the oversight of Pastor Paul Campbell, whose headquarters was in Houston, Texas. A dispute soon arose between Pastor Oyeyemi and Pastor Campbell regarding Mountain's compliance with MFMM's financial reporting requirements.

In November 1, 2005, Pastor Campbell sent Pastor Oyeyemi a notice requiring him to meet with Dr. Olukoya in Lagos within 72 hours. The notice further stated that Pastor Oyeyemi's failure to attend the meeting would be deemed his termination from MFMM. On November 6, 2005, Pastor Oyeyemi agreed to return MFMM's property to a designated agent. He became pastor of a new church named "Blood of Jesus Prayer and Deliverance" (Blood of Jesus).

B. Underlying Action

1. Initial Proceedings

The underlying action against Pastor Oyeyemi commenced in May 2006. The original and first amended complaints identified Mountain as the plaintiff, and alleged that Pastor Oyeyemi had engaged in misconduct while acting as a fiduciary of Mountain, including diverting its members and assets to a new church. Pastor Oyeyemi demurred to the first amended complaint, contending that Mountain

lacked standing to act as plaintiff in the action. The trial court overruled the demurrer.¹

In August 2008, a trial began on the first amended complaint. Following an initial bifurcated bench trial on the issue of Mountain's standing, the court concluded that Mountain lacked standing to pursue the action. The court continued the trial to permit respondent to substitute in as plaintiff and file an amended complaint.

Prior to the filing of respondent's amended complaint, Pastor Oyeyemi challenged respondent's standing to assert claims against him. Respondent replied that MFMM's November 2002 agreement with Pastor Oyeyemi impressed a trust on the assets of his church in favor of MFMM, and that respondent was the assignee of MFMM's right to collect its property from Pastor Oyeyemi. Following a hearing, the trial court rejected Pastor Oyeyemi's objection to respondent's standing.

On February 17, 2009, respondent filed a second amended complaint for conversion and interference with economic relations.² The complaint alleged that beginning May 25, 2005, Pastor Oyeyemi converted respondent's property for use in his new church, Blood of Jesus, and that in establishing the new church, he had improperly diverted respondent's members and their donations to the new church.

¹ In October 2006, Pastor Oyeyemi filed a cross-complaint for libel against MFMM, Pastor Campbell, and Dr. Olukoya. Pastor Oyeyemi abandoned his cross-claims during the trial on respondent's second amended complaint.

² The complaint also contained a claim for defamation and requested injunctive relief. Respondent abandoned its defamation claim during the trial on its second amended complaint.

2. Trial

The three-day jury trial on respondent's claims began on April 20, 2009. Pastor Oyeyemi testified that the church he established in Los Angeles in the early 2000's, although independent of MFMM, was "loosely affiliated" with MFMM in view of his personal relationship with Dr. Olukoya and longstanding participation in MFMM. After starting the Los Angeles church, he used some of MFMM's religious materials and paid ten percent of the offerings he received from churchgoers to the division of MFMM located in the United States.

In April 2002, Pastor Oyeyemi filed a fictitious business name statement that listed himself and Dr. Olukoya as doing business as "Mountain of Fire and Miracles Ministries." Later, in November 28, 2002, Pastor Oyeyemi executed an agreement with MFMM that provided: "I . . . []hereby affirm my loyalty to the Mountain of Fire & Miracles Ministries worldwide. [¶] 1. I will not do anything that would jeopardize the unity of the church, Mountain of Fire & Miracles Ministries in Los Angeles, California. [¶] 2. I hold this church in trust for and on behalf of Mountain of Fire & Miracles Ministries and it is not a personal property. [¶] 3. I will not take any action that would split the church, seize its assets or change the name of the Church. [¶] 4. Any action taken in that direction shall make it haste [*sic*] to prosecutions."

In connection with Mountain's incorporation in September 2003, Pastor Oyeyemi filed articles identifying the corporation's "specific purpose" as "organiz[ing] a Christian fellowship and a church congregation[] to develop mental health programs for the public and to provide social services to the poor and the needy." The bylaws also provided that "[t]he Senior Pastor of the Church shall operate under the guidance of the General Overseer of [MFMM] and the Board of Directors." After Mountain's incorporation, Pastor Oyeyemi reported frequently to

Dr. Olukoya. When Mountain purchased a building for use as a church, Pastor Oyeyemi invited Dr. Olukoya to the dedication ceremony.

In January 2005, Pastor Oyeyemi attended the first MFMM Region 4 conference in Houston. At the conference, he signed the following declaration: “I undertake to be bound by the rules and regulations governing [MFMM] and subsequent rules and regulations which may, thereafter, from time to time, be made by the council of the church.” MFMM’s new organizational plan was announced during the conference. According to Pastor Oyeyemi, when Mountain’s board of directors learned that Mountain and other California churches were to be supervised by a regional supervisor in Houston, the board decided to complain to Dr. Olukoya. Pastor Oyeyemi also believed that Mountain should not be placed under Pastor Campbell’s supervision.³

When Pastor Campbell introduced a new financial reporting system, Pastor Oyeyemi -- who had worked as an accountant -- concluded that the required forms were defective under United States tax law. Although Dr. Olukoya urged Pastor Oyeyemi to use the forms, Pastor Oyeyemi refused to do so, but offered to draft adequate forms. Despite the dispute, Pastor Oyeyemi attended the second Region 4 conference in April 2005.

In May 2005, Pastor Campbell asked Pastor Oyeyemi to provide copies of Mountain’s financial records. After Pastor Oyeyemi forwarded some financial documents, Pastor Campbell informed him that the showing was inadequate. In October 2005, at Pastor Campbell’s request, Pastor Oyeyemi substituted Dr. Olukoya for himself as Mountain’s agent for purposes of service of process.

³ In addition, Pastor Oyeyemi testified that he was offered a supervisory position regarding the California churches, but he refused the offer.

On October 30, 2005, a group of pastors, including Pastors Campbell and Ugeh, appeared at Mountain's church to discuss Pastor Oyeyemi's financial showing with him. According to Pastor Oyeyemi, all but one member of the group left when churchgoers became angry at them; the remaining member engaged in a prayer service with Pastor Oyeyemi. On November 2, 2005, Pastor Oyeyemi received the notice from Pastor Campbell, dated November 1, 2005, requiring him to appear in Lagos, Nigeria, within 72 hours of the date of the notice.

According to Pastor Oyeyemi, on November 5, 2005, he and Mountain's board of directors decided to establish a new church. The board devised a plan to pay off Mountain's existing debts and transfer its assets -- including the proceeds from a sale of the church building -- to the new church.⁴ On November 6, 2005, Pastor Oyeyemi responded to the notice by a letter to Dr. Olukoya, which stated: "In reference to [the notice], which instructed me with [an] ultimatum to be in Lagos . . . within 72 hours (November 3, 2005), or consider myself terminated effective immediately as pastor of Mountain of Fire and Miracles[,] Los Angeles chapter[,] [¶]. . . [¶] and arrange for the handover of all church properties to a designated coordinator[,] [¶]. . . [¶] I hereby inform you that the church's properties under my care are ready to be handed over to the designated coordinator." Pastor Oyeyemi testified that the only MFMM property in his or Mountain's possession were approximately 100 books that had been sent from Houston.

⁴ The church building had been purchased shortly before Mountain's board decided to establish a new church. Although Pastor Oyeyemi acknowledged that he held title to Mountain's church building in his own name, he testified that he did so because Mountain lacked the credit to obtain a loan. According to Pastor Oyeyemi, Mountain's board approved his holding title to the building, Mountain's members provided the funds for the building's purchase, and the proceeds from the sale of the building were used to buy a new building for Blood of Jesus.

Pastor Oyeyemi denied that he misappropriated any assets belonging to Mountain. According to Pastor Oyeyemi, Mountain's board of directors transferred its assets to a nonprofit corporation established for Blood of Jesus. On March 26, 2007, a certificate of dissolution was filed for Mountain.

Pastor Ugeh testified that Pastor Oyeyemi was her senior pastor within California.⁵ According to Pastor Ugeh, Pastor Oyeyemi viewed Pastor Campbell as unfit to act as regional overseer; in addition, he viewed Pastor Ugeh as incompetent to act as a pastor because she was a woman. Pastor Oyeyemi also refused to comply with Pastor Campbell's financial reporting requirements.

On October 30, 2005, at Dr. Olukoya's request, Pastors Ugeh and Campbell, along with three other ministers, appeared at Mountain's church to resolve Pastor Oyeyemi's noncompliance with the requirements. When the group of pastors spoke with Pastor Oyeyemi and Mountain's board of directors, angry churchgoers entered the meeting room and "chased " them off the church property. Later, at Dr. Olukoya's request, Pastor Campbell asked Pastor Ugeh to recover MFMM's assets from Pastor Oyeyemi's church. As all but three of Mountain's churchgoers had become members of Pastor Oyeyemi's new church, Pastor Ugeh also established a new MFMM church in Los Angeles.

Pastor Campbell testified that his conflict with Pastor Oyeyemi arose when Pastor Campbell found what he regarded as serious deficiencies in Pastor Oyeyemi's financial records. After the events in early November 2005, he

⁵ Pastor Ugeh further testified that Pastor Oyeyemi opened a bank account for her church using Mountain's tax identification number, and that donations from her churchgoers were deposited in it. In view of Pastor Oyeyemi's conduct, she believed that respondent was included within Mountain until Mountain was dissolved as a corporation in 2007.

designated Pastor Ugeh to recover MFMM property because she was the most senior pastor in California after Pastor Oyeyemi.

Michael Rosen, an accounting expert, testified that he had examined the records for two bank accounts used in connection with Pastor Oyeyemi's church beginning in 2002. He estimated that from 2002 through November 2005, there had been withdrawals from the accounts totaling \$546,610 for which there was no adequate documentation. He also calculated that absent the disruptive events in November 2005, Mountain would have collected a total of \$283,786 in offerings from November 2005 to the end of 2007. As the new MFMM church in Los Angeles had collected only \$72,872 during that period, he estimated that its shortfall in collections amounted to \$210,913.⁶

3. Judgment

The jury found that Pastor Oyeyemi had engaged in conversion and negligent interference with prospective economic relations, and awarded respondent \$99,786.78 in damages.⁷ On May 20, 2009, judgment was entered in favor of respondent and against Pastor Oyeyemi in accordance with the jury's special verdicts. Later, the trial court denied Pastor Oyeyemi's post-trial motions for a new trial and judgment notwithstanding the verdict.

⁶ At our request, respondent has provided us with copies of exhibits A and B, which summarized Rosen's testimony and were admitted at trial. We hereby augment the record to include the exhibits. (Cal. Rules of Court, rules 8.122(a)(3), 8.155(a)(1)(A).)

⁷ Although the parties refer to the latter tort as "negligent interference with an economic relationship," the jury was instructed with former CACI No. 2204, which defines the elements of a tort called "negligent interference with prospective economic relations" or "negligent interference with prospective economic advantage." (*Venhaus v. Shultz* (2007) 155 Cal.App.4th 1072, 1077.) For clarity, we use the name found in the CACI instruction.

DISCUSSION

Pastor Oyeyemi contends that respondent's claims against him fail because respondent had no standing to assert the claims and no property interest in Mountain's assets, which respondent sought to recover at trial. In addition, he contends that respondent never sufficiently specified the funds he allegedly converted or the independently wrongful conduct required for negligent interference with prospective economic relations.

As explained below, we reject Pastor Oyeyemi's contention that respondent lacked standing to assert claims against him. We nonetheless agree that respondent's claims, as elaborated at trial, were defective insofar as they were predicated on Mountain's assets and income. Although the crux of respondent's claims was that Pastor Oyeyemi, in establishing Blood of Jesus, wrongfully converted Mountain's assets and diverted Mountain's prospective income to Blood of Jesus, respondent failed to show that MFMM had any property interest in Mountain's assets and prospective income.

A. *Standing*

We begin by examining whether respondent established its standing to assert claims for conversion and negligent interference with prospective economic relations against Pastor Oyeyemi. Generally, standing presents a "threshold question of law" when the material facts are undisputed. (*People v. Superior Court (Plascencia)* (2002) 103 Cal.App.4th 409, 424.) Lack of standing is a jurisdictional defect to an action that mandates dismissal (*Cummings v. Stanley* (2009) 177 Cal.App.4th 493, 501), unless the complaint can be amended to substitute the proper plaintiff (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 1004-1011 (*Cloud*)). Because the defect is not forfeited by a failure to object, it

may be raised at any time in an action, including on appeal. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 438-439.)

The demand for standing is founded on Code of Civil Procedure section 367, which requires that “[e]very action must be prosecuted in the name of the real party in interest, except as provided by statute.” Under this statute, “[a] real party in interest is one who has ‘an actual and substantial interest in the subject matter of the action and who would be benefited or injured by the judgment in the action.’” (*Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031-1032, quoting *Friendly Village Community Assn., Inc. v. Silva & Hill Constr. Co.* (1973) 31 Cal.App.3d 220, 225.) For this reason, “a complaint by a party lacking standing fails to state a cause of action by the particular named plaintiff, inasmuch as the claim belongs to somebody else. [Citation.] A more accurately stated rationale would be that there is a defect in the parties, since the party named as plaintiff is not the real party in interest.” (*Cloud, supra*, 67 Cal.App.4th at p. 1004.)

In rejecting Pastor Oyeyemi’s objections to respondent’s standing, the trial court accepted respondent’s theory of standing, which relied on two premises. The first premise is that Pastor Oyeyemi held at least some of his church’s assets in trust for MFMM. Before the trial court and on appeal, respondent has placed special emphasis on Pastor Oyeyemi’s November 2002 agreement, in which he stated, “I hold this church in trust for and on behalf of [MFMM].” The second premise is that Pastor Campbell designated respondent “under the pastorship of Grace Ugeh” to recover MFMM’s assets from Pastor Oyeyemi. Before the trial court and on appeal, respondent has maintained that Pastor Campbell’s designation assigned to respondent MFMM’s right to recover its assets from Pastor Oyeyemi.

We conclude that respondent demonstrated its standing to assert claims for conversion and interference with prospective economic relations. Regarding the

first premise, the parties do not dispute that as early as April 2002, Pastor Oyeyemi operated his church under a registered fictitious business name or “d.b.a.,” and that in November 2002, while he used the d.b.a., he entered into an agreement with MFMM to hold the assets of his church in trust for MFMM. These facts were sufficient to show that after November 2002, Pastor Oyeyemi personally held the assets of his church in trust for MMFA, to the extent the assets fell within the scope of the November 2002 agreement.⁸ Furthermore, as the beneficiary of the trust, MFMM was entitled to assert claims that Pastor Oyeyemi had misappropriated or diverted the assets that he held in trust for MFMM. (*McElroy v. McElroy* (1948) 32 Cal.2d 828, 831.)

Regarding the second premise, respondent established that it had been assigned MFMM’s claims for conversion and interference with prospective economic relations. To begin, we observe that claims of this type are assignable. Generally, the assignment of a cause of action passes title to it from one person to another. (*McDermott, Will & Emery v. Superior Court* (2000) 83 Cal.App.4th 378, 382.) Claims arising out of “an obligation, breach of contract, violation of a right of property, or damage to personal or real property” are ordinarily assignable, unlike claims arising “from a wrong done to the person, the reputation, or the feelings of the injured party, and from breaches of contracts of a purely personal nature ([such as] promises of marriage).” (*Curtis v. Kellogg & Andelson* (1999) 73 Cal.App.4th 492, 504.) Under these principles, a claim for conversion is assignable. (*Staley v. McClurken* (1939) 35 Cal.App.2d 622, 625.) We reach the same conclusion

⁸ Generally, courts have concluded that the designation “d.b.a.” in connection with an individual indicates that the individual operates a business and is liable for its obligations. (See *Providence Washington Ins. Co. v. Valley Forge Ins. Co.* (1996) 42 Cal.App.4th 1194, 1200; *Pinkerton’s, Inc. v. Superior Court* (1996) 49 Cal.App.4th 1342, 1348-1349 and the cases cited therein.)

regarding a claim for negligent interference with prospective economic relations, as determinable interests in future earnings and profits are subject to assignment (*Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 367-368; *H. S. Mann Corp. v. Moody* (1956) 144 Cal.App.2d 310, 318; see *Superior Gunitite v. Ralph Mitzel, Inc.* (2004) 117 Cal.App.4th 301, 305-306, 316 [affirming damages awarded in connection with assigned claims for negligence and negligent interference with an economic relationship]).

Furthermore, respondent established that MFMM had assigned its claims to respondent. “[A]n assignment, to be effective, must include manifestation to another person by the owner of his intention to transfer the right, without further action, to such other person or to a third person. [Citation.] It is the substance and not the form of a transaction which determines whether an assignment was intended. [Citations.] If[,] from the entire transaction and the conduct of the parties it clearly appears that the intent of the parties was to pass title to the [cause of action], then an assignment will be held to have taken place. [Citations.]” (*McCown v. Spencer* (1970) 8 Cal.App.3d 216, 225.) Here, Pastors Ugeh and Campbell each testified that MFMM had authorized Pastor Ugeh to recover its assets from Pastor Oyeyemi.

Pastor Oyeyemi suggests that this testimony showed no assignment of MFMM’s claims to respondent. We disagree. As noted above, the existence of an assignment must be discerned on the basis of all the circumstances, including the parties’ conduct; moreover, the assignee of a cause of action may assign it to another party (see *Miller v. Bank of America* (1942) 52 Cal.App.2d 512, 515-516). As both Pastors Campbell and Ugeh voiced no objection to respondent’s status as plaintiff during the trial, their conduct unequivocally showed that respondent had been assigned MFMM’s claim through a direct assignment by MFMM or a

subsequent reassignment by Pastor Ugeh. In sum, respondent had standing to assert its claims for conversion and negligent interference with prospective economic relations.

B. *No Property Interest in Mountain's Assets*

We turn to Pastor Oyeyemi's contention that respondent's claims, as elaborated at trial, were defective as a matter of law because respondent established no property interest in Mountain's assets. We agree. Although respondent had standing as MFMM's assignee to assert claims for conversion and negligent interference with prospective economic advantage against Pastor Oyeyemi (see pt. A., *ante*), the primary damages respondent sought at trial were related to Mountain's assets, which respondent maintained Pastor Oyeyemi held in trust for MFMM. However, absent a showing that MFMM had a property interest in Mountain's assets, MFMM's assignment of its claims against Pastor Oyeyemi to respondent did not authorize respondent's claims regarding Mountain's assets. (See *Judelson v. American Metal Bearing Co.* (1948) 89 Cal.App.2d 256, 261-266, [assignment of claims against incorporator does not, by itself, entitle assignee to assert claims against pertinent corporation].) As explained below, respondent failed to show that MFMM had any such interest in Mountain's assets.

1. *Governing Principles*

There is no dispute that Mountain was a nonprofit religious corporation (Corp. Code, § 9111 et seq.).⁹ As such, it was a charitable trust required to use its assets for the purpose stated in its articles of incorporation. (*In re Metropolitan*

⁹ All further statutory citations are to the Corporations Code.

Baptist Church of Richmond, Inc. (1975) 48 Cal.App.3d 850, 856-857; 9 Witkin, Summary of Cal. Law (10th ed. 2005) Corporations, §§ 252, 383, pp. 1016-1017, 1120-1121.) As is typical for such corporations, the evidence at trial established that its assets “consisted of gifts, or the proceeds and increment of gifts.” (*In re Metropolitan Baptist Church of Richmond, Inc.*, *supra*, 48 Cal.App.3d at p. 857.) Mountain obtained funds from churchgoers, which were placed in bank accounts and withdrawn for various reasons, including the purchase of a church building. Mountain’s articles of incorporation specified its purpose as “organiz[ing] a Christian fellowship and a church congregation[] to develop mental health programs for the public and to provide social services to the poor and the needy.” In addition, Mountain’s bylaws identified its purpose as “organiz[ing] a Teaching and a Praying Church and . . . provid[ing] Social and Charitable Services to the public.”

In asserting that Pastor Oyeyemi misappropriated or wrongfully diverted assets belonging to MFMM after Mountain’s incorporation, respondent necessarily maintained that Mountain held its assets for MFMM. In *Episcopal Church Cases* (2009) 45 Cal.4th 467, 478-485, our Supreme Court elaborated how California courts should resolve “internal church disputes” of this type regarding the ownership of church property. There, a local church that operated as a religious corporation disaffiliated itself from the national church, resulting in a property dispute regarding the ownership of the local church’s building. (*Id.* at pp. 474-476.)

As explained in *Episcopal Church Cases*, the United States Supreme Court has held that state courts may resolve church property disputes in accordance with state law, provided the method of resolution does not contravene the First Amendment to the United States Constitution. (*Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 478.) The United States Supreme Court has approved two such

methods. (*Id.* at p. 480.) Under the first method, which is often called the ““principle of government”” approach, a court examines whether the general church manifested a hierarchical organization in which the local church subordinated itself to higher church authorities on questions of faith, discipline, or other matters; if so, the court, in resolving the property dispute, places special emphasis on the decisions of the higher church authorities. (*Id.* at p. 480.) In contrast, if the general church does not display a hierarchical organization, the court resolves the dispute in accordance with ordinary principles applicable to voluntary associations. (*Ibid.*) Under the second method, which our Supreme Court called the “neutral principles of law” approach, a court resolves the dispute by examining the constitutions, articles of incorporation, and other governing rules of the local and general churches, viewed in light of relevant state statutes, including suitably “neutral” laws concerning religious property. (*Id.* at pp. 480-485.)

California courts have long applied the neutral principles approach. (*Episcopal Church Cases, supra*, 45 Cal.4th 467.) In *Episcopal Church Cases*, our Supreme Court dispelled residual doubts regarding this matter, holding that to the extent property disputes involve no point of religious doctrine, California courts must apply neutral principles of law. (*Id.* at p. 485.) Under this approach, “[t]he court should consider sources such as the deeds to the property in dispute, the local church’s articles of incorporation, the general church’s constitution, canons, and rules, and relevant statutes, including statutes specifically concerning religious property, such as . . . section 9142.” (*Ibid.*)

Regarding religious property, subdivision (c) of section 9142 provides: “No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at common law unless one of the following applies:

“(1) Unless, and only to the extent that, the assets were received by the corporation with an express commitment by resolution of its board of directors to so hold those assets in trust.

“(2) Unless, and only to the extent that, the articles or bylaws of the corporation, or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.

“(3) Unless, and only to the extent that, the donor expressly imposed a trust, in writing, at the time of the gift or donation.”

The neutral principles approach, insofar as it relies on section 9142, overlaps in some measure with the principle of government approach. (*Episcopal Church Cases, supra*, 45 Cal.4th at pp. 484, 492.) Thus, in *Episcopal Church Cases*, the court concluded that under subdivision (c)(2) of section 9142, a hierarchically organized general church can unilaterally impress a trust upon the assets of a subordinated local religious corporation when the general church’s governing instruments expressly provide for a trust. (*Episcopal Church Cases, supra*, at pp. 491-492.) Nonetheless, under the neutral principles approach, the mere existence of a hierarchical organization is insufficient to create such a trust, absent provisions regarding the disposition of local church property in the governing documents of the general or local church. (*Iglesia Evangelica Latina, Inc. v. Southern Pacific Latin American Dist. of the Assemblies of God* (2009) 173 Cal.App.4th 420, 443.)

In resolving issues arising under the neutral principles approach, we apply two standards of review. To the extent our inquiry hinges on the interpretation of the articles of incorporation, bylaws, and other governing documents of MFMM and Mountain, we apply neutral principles of law de novo. (*Concord Christian Center v. Open Bible Standard Churches* (2005) 132 Cal.App.4th 1396, 1408-1409.) However, to the extent the application of the governing documents hinges

on factual questions regarding the underlying circumstances, we examine the record for substantial evidence favorable to the judgment. (*Ibid.*) Under this standard, “we must consider all the evidence in the light most favorable to the prevailing part[y], giving [it] the benefit of every reasonable inference, and resolving conflicts in support of the judgment.” (*Ibid.*)

2. Analysis

We conclude that respondent failed to show that a trust had been impressed in MFMM’s favor on Mountain’s assets. As explained above (see pt. B.1, *ante*), Mountain’s assets were not subject to any trust -- whether “express or implied, statutory or at common law” -- unless respondent demonstrated that at least one of the provisions of section 9142, subdivision (c), had been satisfied. This respondent did not do.¹⁰

At trial, respondent presented evidence that MFMM is a hierarchical church. Pastor Campbell testified that MFMM imposed requirements on its pastors regarding conduct and salaries, and financial reporting requirements on its local branches to ensure that MFMM was “seen . . . by the public to be accountable.” In addition, Pastor Ugeh testified that Dr. Olukoya had ordered local churches that incorporated to provide in its articles and bylaws that pastors and their relations could not be members of the board of directors.

There was also evidence that Mountain and Pastor Oyeyemi had subordinated themselves to MFMM’s authority in various respects. Mountain’s bylaws provided

¹⁰ We note that Pastor Oyeyemi never expressly directed the trial court’s attention to the neutral principles approach during the underlying proceedings. Nonetheless, we conclude that he has not forfeited his contention, as he challenged respondent’s standing on the ground that respondent had not shown that a trust had been impressed on Mountain’s assets under section 9142, subdivision (c).

that “[t]he Senior Pastor of the Church shall operate under the guidance of the General Overseer of [MFMM] [¶]. . . [¶] and the Board of Directors.” In addition, Mountain paid ten percent of its churchgoers’ offerings to the division of MFMM located in the United States. There was also evidence that Pastor Oyeyemi had personally subordinated himself on certain matters, as his November 2002 agreement required him to remain loyal to MFMM and hold the assets of his church in trust for MFMM, and his January 2005 agreement subjected him to MFMM’s directives.

Although this evidence shows that Mountain was a local religious corporation within a hierarchical church, it fails to establish the existence of a trust on Mountain’s assets under any of the three provisions of section 9142, subdivision (c). The record discloses no resolution by Mountain’s board of directors expressly placing its assets in trust for MFMM, for purposes of section 9142, subdivision (c)(1). Nor is there evidence that Mountain’s articles and bylaws or MFMM’s “governing documents” expressly provided for a trust on Mountain’s assets, for purposes of section 9142, subdivision (c)(2). Finally, nothing in the record suggests that MFMM was the “donor” of the assets it sought to recover or that it imposed a trust on any such assets “at the time of the gift or donation,” for purposes of section 9142, subdivision (c)(3).

Respondent contends that Pastor Oyeyemi’s November 2002 agreement operated to impose a trust in MFMM’s favor on Mountain’s assets. Pointing to *Episcopal Church Cases*, respondent argues that the November 2002 agreement, coupled with MFMM’s hierarchical organization, was sufficient to create a trust. We disagree. As explained in *Episcopal Church Cases*, under section 9142, subdivision (c)(2), a general church with a hierarchical organization can unilaterally

impress a trust only when its governing instruments “so provide.” (*Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 492.)

The November 2002 agreement cannot be regarded as an MFMM “governing instrument” that impressed a trust on Mountain’s assets, as it was executed nearly a year before Mountain was created, and was signed by Pastor Oyeyemi as an individual while he operated his church under a “d.b.a.” Generally, a corporation is not bound by contracts executed by its incorporator prior to the corporation’s creation absent ratification or adoption by the corporation itself. (*Chapman v. Sky L’Onda etc. Water Co.* (1945) 69 Cal.App.2d 667, 675.) As noted above, once incorporated, Mountain never ratified or adopted Pastor Oyeyemi’s personal trust obligations. For this reason, the November 2002 agreement encompassed only those assets held by Pastor Oyeyemi while he operated his church under a “d.b.a.,” but not the assets that accrued to Mountain after its creation. To hold otherwise would be to disregard the neutral principles of law central to the method for resolving property disputes mandated in *Episcopal Church Cases*.¹¹

Furthermore, MFMM had considerable opportunity to impose a trust unilaterally on Mountain’s assets before the critical events in November 2005, but failed to do so. Under the doctrine of estoppel, when a corporation takes over its incorporator’s business, a third party’s claims against the incorporator may attach to the corporation when the third party was denied notice of the incorporation. (*Judelson v. American Metal Bearing Co.*, *supra*, 89 Cal.App.2d at pp. 263-264.) However, no evidence at trial suggested that Pastor Oyeyemi hid Mountain’s incorporation from MFMM or that MFMM was unaware of it. On the contrary, the

¹¹ In a related contention, respondent maintains that the November 2002 agreement between MFMM and Pastor Oyeyemi rendered Mountain an agent of MFMM. This contention also fails, as Mountain never ratified or adopted the November 2002 agreement.

evidence showed that Pastor Oyeyemi communicated frequently with Dr. Olukoya, that Pastors Campbell and Ugeh knew that Mountain had been incorporated, that several churches in Region 4 had been incorporated, and that MFMM propounded some general requirements for incorporated churches. Nonetheless, after Mountain's incorporation in September 2003, MFMM took no action to ensure that Mountain held its assets in trust for MFMM.¹²

Respondent also contends that the provision in Mountain's bylaws that "[t]he Senior Pastor of the Church shall operate under the guidance of the General Overseer of [MFMM] [¶]. . . [¶] and the Board of Directors," coupled with the other facts regarding Mountain's subordination to MFMM, operated to create a trust in MFMM's favor on Mountain's assets. We find guidance on this contention from *Protestant Episcopal Church v. Barker* (1981) 115 Cal.App.3d 599 (*Protestant Episcopal Church*), a leading case in the application of the neutral principle approach to church property disputes. There, four local religious corporations affiliated with a national church fell into property disputes with the national church when they severed their relationship with it. (*Id.* at pp. 604-605.) The articles of incorporation for each local corporation stated that it was a "constituent part" of the national church or an organizational subunit (diocese) of the national church, but only one corporation operated under articles expressly providing that its assets

¹² For similar reasons, we reject any contention that the November 2002 agreement imposed a trust on Mountain's assets under section 9142, subdivision (c)(3). Respondent never showed that any assets held in trust by Pastor Oyeyemi under the November 2002 agreement were given or donated to Mountain. However, assuming -- without deciding -- that this occurred, the November 2002 agreement was executed over a year before Mountain was incorporated, and thus the agreement was not executed "at the time of the gift or donation" (§ 9142, subd. (c)(3)); furthermore, MFMM never executed any other written document expressly impressing a trust on any such assets, despite ample opportunity to do so.

would be surrendered to the national church upon disaffiliation. (*Id.* at pp. 606-611, 625.) The appellate court concluded that only the latter held its assets in trust for the national church, even though the other three corporations had declared themselves to be “constituent parts” of the national church or its subunits and had voluntarily submitted to the national church’s financial reporting requirements. (*Id.* at pp. 625-626.) In view of *Protestant Episcopal Church*, we conclude that Mountain’s articles of incorporation did not impose an express trust on Mountain’s assets, as they merely obliged its pastor to find guidance from Dr. Olukoya. In sum, respondent established no ownership interest in Mountain’s assets as MFMM’s assignee.

3. *Prejudice*

The remaining issues concern whether respondent’s failure to establish MFMM’s interest in Mountain’s assets was prejudicial to Pastor Oyeyemi, and, if so, what remedy is appropriate. As explained below, the effect of the failure was to permit respondent to litigate its claims on the incorrect theory that Mountain’s corporate existence was irrelevant to Pastor Oyeyemi’s liability for conversion and negligent interference with prospective economic relations. As a result, the failure cannot be regarded as harmless.¹³

Here, the special verdict form asked the jury to make specific findings with respect to the elements of each tort, with the exception of damages. Regarding

¹³ Generally, an error or defect at trial “is usually deemed harmless . . . unless there is a ‘reasonabl[e] probab[ility]’ that it affected the verdict.” (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 715, quoting *People v. Watson* (1956) 46 Cal.2d 818, 836.) In this context, “a ‘probability’ . . . does not mean more likely than not, but merely a reasonable chance, more than an abstract possibility. [Citations.]” (*College Hospital, Inc. v. Superior Court*, *supra*, at p. 715, italics omitted.)

damages, the special verdict form requested the jury to render only a consolidated finding regarding the total amount of damages arising from the torts. After determining that the elements of each tort had been established, the jury found the total amount of damages to be \$99,786.78.

Respondent's interference claim is incapable of supporting the award of damages: because the claim relied *entirely* on Mountain's assets, the claim is fatally defective. To establish this tort, respondent was obliged to show that "an economic relationship existed between [MFMM] and [Mountain] which contained a reasonably probable future economic benefit or advantage to [MFMM]," and that Pastor Oyeyemi had wrongfully disrupted the relationship. (*Venhaus v. Shultz*, *supra*, 155 Cal.App.4th at p. 1077.) In an effort to carry this burden, respondent maintained that the creation of Blood of Jesus improperly diverted churchgoers' contributions from Mountain to Blood of Jesus. Because MFMM had no ownership interest in these contributions to Mountain, respondent did not establish the requisite economic relationship between MFMM and Mountain.

We also conclude that the award of damages cannot be affirmed on the basis of respondent's conversion claim. Generally, conversion is ""any act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein."" (*Messerall v. Fulwider* (1988) 199 Cal.App.3d 1324, 1329.)¹⁴ To establish conversion, respondent maintained that Pastor Oyeyemi had withdrawn funds in his church's bank accounts without adequate documentation. Respondent relied on its accounting expert, Michael Rosen, who testified that he

¹⁴ The remedies for conversion include specific recovery of the property, damages, and a quieting of title. (5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 700, pp. 1024-1205.) Respondents' claim sought damages and "other and further relief as the [c]ourt . . . deem[ed] proper."

had examined the records for two bank accounts used in connection with Pastor Oyeyemi's church beginning in 2002. The first account was opened in early 2002, and the second was opened in January 2005. Some of the suspect withdrawals from the first account may have occurred before Mountain came into existence; however, Rosen was not asked to differentiate between withdrawals occurring before and after Mountain's incorporation.¹⁵

The remaining issue concerns the appropriate remedy. Because the conversion claim was tried on an incorrect legal theory that impaired full development of the evidence relevant to conversion, we remand the matter for a new trial on respondent's conversion claim, limited to whether Pastor Oyeyemi converted bank account funds entrusted to him by MFMM under the November

¹⁵ Although respondent has suggested that its conversion claim against Pastor Oyeyemi involved items of property other than the bank accounts, the record establishes that the conversion claim hinged on Rosen's testimony. During the closing arguments at trial, respondent's counsel maintained that Pastor Oyeyemi engaged in conversion with respect to his church's building, which was purchased shortly before the disruptive events in October 2005. However, respondent's counsel identified no specific damages from this misconduct other than a \$139,786 withdrawal in October 2005 from the church's accounts to pay for the building's purchase, which Rosen had included among the suspect withdrawals from the accounts.

On appeal, respondent argues that its conversion claim was also predicated on chairs, books, and other tangible items that were transferred to Blood of Jesus. This contention finds no support in the record. Aside from the monetary damages respondent asserted at trial, the only evidence that Pastor Oyeyemi or Mountain held items of property belonging to MFMM came from Pastor Oyeyemi, who testified that he and Mountain possessed approximately 100 books from MFMM that he had offered to return. Although respondent's counsel briefly referred to these books during his closing argument, respondent never included the restoration of these items or their monetary value within the remedies it sought. Respondent did not request the recovery of *any* specific items of property, and the special verdict form asked the jury solely to assess monetary damages for conversion. During a conference on jury instructions, respondent's counsel acknowledged that no evidence had been admitted regarding the fair market value of items of property, for purposes of a conversion claim.

2002 agreement prior to Mountain's incorporation. (See *Toscano v. Greene Music* (2004) 124 Cal.App.4th 685, 695-697.)

C. Pastor Oyeyemi's Contention of Instructional Error

For the guidance of trial court upon remand, we address Pastor Oyeyemi's remaining contention regarding respondent's conversion claim. He maintains that during the underlying trial, the court improperly rejected a special instruction that he requested. As explained below, we see no error in the ruling.

Generally, "[a] party is entitled upon request to correct, nonargumentative instructions on every theory of the case advanced by him which is supported by substantial evidence." (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 572.) However, "[i]n order to complain of failure to instruct on a particular issue the aggrieved party must request the specific proper instructions. [Citations.] . . . [T]he court has no duty to modify erroneous instructions submitted to it, and there is no error if it simply rejects such instructions. [Citation.] . . . [¶] Furthermore, the duty of the court is fully discharged if the instructions given by the court embrace all the points of the law arising in the case. [Citations.]" (*Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 335.)

Pastor Oyeyemi contends that although the jury was instructed with a modified version of CACI No. 2100, which sets forth the general elements of conversion, an additional instruction was needed to guide the jury regarding respondent's conversion claim, which focused on the funds in the two bank accounts. Generally, "[a] cause of action for conversion of money can be stated only where a defendant interferes with plaintiff's possessory interest in a specific, identifiable sum, such as when a trustee or agent misappropriates the money entrusted to him." (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267,

284, italics omitted.) Nonetheless, although “a specific sum capable of identification” must be involved, “it is not necessary that each coin or bill be earmarked.” (*Haigler v. Donnelly* (1941) 18 Cal.2d 674, 681.) Thus, in *Fischer v. Machado* (1996) 50 Cal.App.4th 1069, 1072-1074, the appellate court affirmed the plaintiffs’ judgment for conversion against the plaintiff’s agents, reasoning that the plaintiffs had sufficiently identified the amount of money due them, even though the agents had commingled the funds they received on the plaintiffs’ behalf with other money in a bank account.

Here, Pastor Oyeyemi’s proposed instruction stated: “Where the relationship of debtor and creditor only exists[,] conversion of the funds representing the indebtedness is not actionable against the debtor unless the debtor is required to return to the owner the identical money. In other words, dollars which are deposited in a general bank account with other dollars are not the subject of an action for conversion.” This instruction was derived from *Watson v. Stockton Morris Plan Co.* (1939) 34 Cal.App.2d 393, 403, in which the appellate court explained that a creditor cannot assert a conversion claim based on an amount of money against a debtor unless the debtor holds the funds in a fiduciary capacity.

Under the principles regarding instructions described above, the trial court properly rejected the proposed instruction, as the record was devoid of evidence that Pastor Oyeyemi’s relationship with MFMM was merely that of a debtor to a creditor. On the contrary, the undisputed evidence at trial established that he became a trustee for MFMM under the November 2002 agreement. Nor did the CACI instruction, viewed in context, fail to “embrace all the points of the law arising in the case” (*Hyatt v. Sierra Boat Co., supra*, 79 Cal.App.3d at p. 335), as respondent apprised the jury that it sought specific sums in bank accounts that

Pastor Oyeyemi purportedly held for MFMM under the November 2002 agreement. In sum, there was no instructional error.

DISPOSITION

The judgment is reversed, and the matter is remanded to the trial court for a new trial on respondent's claim for conversion in accordance with this opinion, limited to whether Pastor Oyeyemi converted bank account funds entrusted to him by MFMM under the November 2002 agreement prior to Mountain's incorporation. Pastor Oyeyemi is awarded his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.